

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
AUSTIN FENNER and : : Civ. No.: 09 CV 9832 (LGS)  
IKIMULISA LIVINGSTON, :  
Plaintiffs, :  
vs. :  
NEWS CORPORATION, NYP HOLDINGS, :  
INC., d/b/a THE NEW YORK POST, :  
MICHELLE GOTTHELF and , DANIEL :  
GREENFIELD, in their official and individual :  
capacities, :  
Defendants. :  
-----x

**AFFIDAVIT OF MICHAEL RACANO**

**STATE OF NEW YORK** )  
                             ) ss.:  
**COUNTY OF NEW YORK** )

MICHAEL RACANO, being duly sworn, deposes and says:

1. I am the Chief Financial Officer (“CFO”) for NYP Holdings, Inc., d/b/a the New York Post (the “Post”). I have personal knowledge of the facts set forth herein, except where otherwise indicated. I submit this Affidavit in support of Defendant News Corporation’s (“News Corp.”) motion for summary judgment. This Affidavit does not include all facts and circumstances known to me that relate to this matter.

2. I have been employed by the Post since November 17, 2013. My duties and responsibilities include, among other things, overseeing the Post’s Finance Department. As CFO, I am an employee of the Post, the highest ranking member of the Post’s Finance Department, and I report to the Post’s Publisher, who is my supervisor. My performance

evaluations are done each year by the publisher of the Post. I receive my paychecks from the Post.

3. The Post, and not News Corp., is responsible for making all day-to-day decisions regarding the production, distribution, marketing and advertising of its product, the *New York Post* newspaper.

4. By way of example, the Post has its own Marketing Department responsible for, among other things, the marketing and advertising of the *New York Post* newspaper, which does not provide any such services to News Corp. Likewise, the Post has its own Accounting Department, responsible for overseeing its accounting and/or accounts receivable, and which similarly does not provide any such services to News Corp. The Post also has its own editorial staff responsible for generating editorial content for the *New York Post* newspaper. The Post does not utilize any News Corp. employees or facilities to print the newspaper. No member of these Post departments is a News Corp. employee, and the heads of these departments all report to the Publisher (or to a Post employee who reports to the Publisher). No News Corp. employee has the authority to hire and/or fire Post employees.

5. Similarly, the Post's Finance Department, which I run, is responsible for overseeing and maintaining the Post's finances. We are responsible for our own financial books and records, including without limitation our own profit and loss statements. Neither News Corp. nor any News Corp. employee maintains the Post's finances, books, and/or records. The Post's Finance Department is comprised exclusively of Post employees, and no member of our department is employed by News Corp., nor do any News Corp. employees provide services to this department. Furthermore, no member of the Post's Finance Department is supervised by or

reports to any News Corp. employee, nor does any News Corp. employee have the authority to hire and/or fire any member of the Post's Finance Department.

6. The Post, and not News Corp., issues paychecks to its employees. News Corp. does not compensate Post employees.

7. The Post pays its day-to-day expenses from its own bank account. The Post is responsible for, without limitation, paying its employees' salaries, production costs for the *New York Post* newspaper, costs in connection with stories, and expenses arising in connection with the daily operation of the Post's offices.

8. The Post and News Corp. occupy separate offices on different floors of 1211 Avenue of Americas (the "1211 Building"). The Post is charged rent for the space it occupies.

9. At times, Post employees may use conference rooms on the third floor of the 1211 Building. Upon information and belief, these conference rooms are also used by employees of other companies. The Post does not operate these conference rooms, but may be charged for certain costs related to their use.

Sworn to before me this 3  
8<sup>th</sup> day of May 201X  
Valerie White  
NOTARY PUBLIC

VALERIE WHITE  
Notary Public, State of New York  
Qualified in Queens County  
No. 01WH4836322  
Commission Expires 05/31/20 15

  
MICHAEL RACANO